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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of	)	
Consumer Federation of America,	)	RM No. 9210
International Communications Association	)	
and National Retail Federation	)	
Relating to Access Charge Reform	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its comments on the Petition for Rulemaking filed jointly by Consumer Federation of America, International Communications Association and National Retail Federation (CFA/ICA/NRF).

In their petition, CFA/ICA/NRF argue that the Commission's reliance in Access Charge Reform, 12 FCC Rcd 15982 (1997), primarily on market forces from facilities-based and unbundled network element (UNE) based competition to drive access charges down to forward looking costs has been seriously undercut by the lack of meaningful local competition, and by the Eighth Circuit's decisions invalidating much of the Commission's local competition efforts.[1] Petitioners urge the Commission to open a rulemaking looking towards immediate prescription of access charges based on forward-looking costs. Sprint shares petitioners' concern but does not support the precise relief they seek.

[1] Iowa Utilities Board v. FCC, 120 F.3rd 753 (8th Cir. 1997), Order on Rehearing issued October 14, 1997, certiorari granted, January 26, 1998.

As was clear from Sprint's submissions in the Access Charge Reform docket,[2] Sprint has been skeptical from the outset as to whether local telephone competition could be relied on to force access charges of incumbent LECs to costs within the next several years. Even resale, the simplest form of local competition, but one which brings no pressure to bear on access charges, is dead in the water. It is simply not a profitable stand-alone entry strategy. Sprint, AT&T and MCI have all ceased to market their resale services to new customers. Sprint's skepticism has been substantially reinforced by the decisions of the Eighth Circuit. Those decisions, which were issued after the First Report and Order in Access Charge Reform and thus could not have been fully anticipated by the Commission in its decision, have erected an enormous roadblock against the development of local competition. By gutting the Commission's pricing rules, the Eighth Circuit is leaving it to the states, the federal district courts, and ultimately, the various courts of appeals and the Supreme Court, to determine the proper pricing of local interconnection and UNEs. Although many state commissions have thus far supported the use of TELRIC pricing, their efforts are being challenged on appeal by many ILECs.

The Eighth Circuit's order on rehearing of October 14, 1997 struck a further serious blow against local competition by allowing ILECs to disassemble UNEs that were already combined in the ILEC's network, a move that artificially increases competitive LECs' costs of using UNEs to offer competitive local service to the point that it may become physically impracticable or economically prohibitive to offer local service through combined UNEs.

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[2] See Sprint's January 29, 1997 Comments at 33-38; and Sprint's February 14, 1997 Reply Comments at 19-23.

Although the Supreme Court, earlier this week, granted certiorari, it appears unlikely that the Court will render a decision before 1999. And even if its decision results in overturning the Eighth Circuit, as Sprint hopes and expects, a resurrection of the Commission's pro-competitive local competition policies will not have marketplace effects overnight. RBOCs may raise substantive issues not addressed by the Eighth Circuit, states may have to set interconnection and UNE rates on a new basis, and interconnection agreements may have to be renegotiated. And CLECs must make new business plans in light of the changed landscape. Because of these factors, it will take some time after the Supreme Court acts before its decision is translated into the beginnings of a more competitive local marketplace.

In the meantime, the substantial change in circumstances since the adoption of the Access Charge Reform order requires, both as a matter of logic and possibly of law,[3] that the Commission reexamine whether its reliance on market forces to drive access rates to costs is warranted. To that extent, Sprint fully shares the concerns of CFA/ICA/NRF.

However, Sprint differs with the petitioners as to the action the Commission should take once it reopens the record. Sprint believes that it is both unwise and unsound for the Commission to prescribe access charges based on forward-looking costs on a flash cut basis. Such an approach ignores the reality that much of the access charge dilemma is the result of policies designed to maintain below-cost local service rates. Therefore, such an action – particularly in advance of completion of the Commission's plan to replace

[3] Compare Geller v. FCC, 610 F.2d 973, 979-80 (DC Cir. 1979) (when original rationale for agency rule disappears, agency must reexamine whether the rule remains in the public interest).

implicit universal service subsidies with an explicit fund for high cost areas – raises questions of fairness to incumbent LECs and could lead to unnecessary litigation on possible claims of confiscation. A better approach, and one that Sprint advocated in its prior submissions in CC Docket No. 96-262, is for the Commission to take measured steps to transition ILECs from existing access charges to cost-based access charges over a finite period of time. Giving ILECs reasonable notice of a change in regulatory policy – from the current inflated access charges to charges based on forward looking costs – and a reasonable time to manage their businesses towards that end, coupled with implementation of a new explicit, competitively neutral high-cost fund for universal service, would, in Sprint's view, negate most claims that the Commission is engaging in confiscatory ratemaking.[4]

In a fashion, the Commission has already given such notice in its Access Charge Reform order. Paragraph 267 or the Order (12 FCC Rcd at 16096-97) contemplates that by February 8, 2001, the ILECs must submit cost data that would enable the Commission to prescribe cost-based rates for any access rate elements that are not already subject to full competition. However, simply waiting until that date before taking any further action is not, in Sprint's view, consistent with the public interest. Above-cost access charges are economically inefficient and a substantial burden to long distance carriers and their consumers, and have the effect of substantially dampening demand for this highly elastic service.[5] There are other steps the Commission could take to transition access charges to

[4] If, after interstate access charges have been reduced to costs and an explicit USF high-cost fund has been implemented, LECs face substantial "stranded" interstate-allocated investment, they should have an opportunity to recover those costs from retail end users.
[5] See Sprint's January 29, 1997 Comments in CC Docket No. 96-262, at 5 and Exhibit 2.

a cost-based level between now and 2001 while still avoiding unnecessary litigation over "confiscation" issues. For example, the Commission could transition non-traffic-sensitive costs to subscriber line charges for primary residential and single-line business lines. Such steps would load costs on the cost causer directly, rather than indirectly (as PICCs do). To the extent facilities-based or UNE-based local competition does develop, such cost recovery will subject the ILECs' levels of non-traffic-sensitive costs to competitive pressure through competition for the end-user's local business. As long as ILEC rates for local service, especially to residential customers, are kept artificially low, either local residential competition by facilities-based or UNE-based carriers will never develop, or the new entrants, forced to match the below-cost local rates of the incumbents, will seek to make themselves whole by imposing excessive access charges on unaffiliated IXCs. A new rulemaking (or, if the Commission prefers, a reopening of CC Docket 96-262) would enable the Commission to consider the ideas of Sprint and other parties for a measured transition from current access charges to cost-based charges.

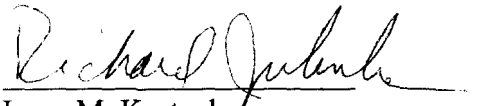
Finally, Sprint wishes to reiterate its firm conviction that any transition to cost-based access charges should only constitute a maximum period to achieve cost-based rates. Since access charges remain such a significant portion of long distance costs, it is imperative that long distance carriers not be required to face interLATA competition from the RBOCs until the access costs the RBOCs impose on unaffiliated IXCs are equal to their own real internal costs of access – i.e., forward-looking costs. Thus, Sprint continues to urge the Commission to view the absence of cost-based access charges as one of the public interest criteria that would warrant disapproval of an RBOC application for in-region long distance authority under §271 of the Act. By the same token, the

Commission should allow RBOCs the flexibility, if they wish to obtain §271 authority before a mandatory transition to cost-based access charges has ended, to voluntarily lower their access charges before that date.

In sum, Sprint believes the recent Eighth Circuit decisions sufficiently dim the prospects for meaningful local competition in the near term so as to warrant a reopening of the Commission's reliance on market forces in its Access Charge Reform decision. Thus, Sprint supports the initiation of a rulemaking proceeding, as requested by CFA/ICA/NRF. And while Sprint supports cost-based access charges, it disagrees with the petitioners that there should be a flash cut to such access charges, but instead suggests that the Commission include in such further rulemaking reasonable transition plans to achieve that end.

Respectfully submitted,

SPRINT CORPORATION



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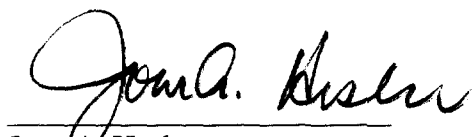
January 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 30th day of January, 1998, to the below-listed parties:



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